

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 466 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

JYOTIPRAKASH RAMGOPAL PUROHIT

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 466 of 2002
MR HN JHALA for Petitioner No. 1-2
Mr S J Dave, APP for Respondent No. 1
MR YOGESH S LAKHANI for Respondent No. 2
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CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 17/02/2003

ORAL JUDGEMENT

This revision application has been filed by the petitioners above named challenging an order of the trial court for framing charge dated 1.11.2002 against the petitioners in Sesions Case No.156/2002.

2. By the said charge, the present petitioners have been charged for offences punishable under sections 3 and 7 of the Dowry Prohibition Act. The petitioners have also been charged for offence punishable under Section 498A of IPC read with section 114 thereof. They are further charged for having committed offence punishable under section 302 of IPC.

3. It is the case of the prosecution that on 2.10.2001 at about 1.30 p.m., the petitioners committed murder of their daughter-in-law Rekhaben. It is also the case of the prosecution that the petitioners used to demand and receive dowry. It is also the case of the prosecution that the two petitioners extended physical and mental cruelty to deceased Rekhaben. In view of the above allegations, charge as above, has been framed against the petitioners. Feeling aggrieved by the said charge framed against the petitioners dated 1.11.2002, the petitioners have preferred this revision application.

4. It has been mainly contended here that when a charge for offence punishable under section 302 of IPC has been framed, the petitioners could not be alternatively charged for having committed offence under section 306 of IPC. Therefore, the said charge is sought to be quashed and set aside. After hearing, it is found that so far as the charge is concerned, which is placed at page 31 and, on going through the said charge, it is very clear that the trial court has not framed charge for offence under section 306 of IPC. Therefore, even when the charge has not been framed for offence punishable under section 302 read with section 306 of IPC, then, the above apprehension of the prosecution does not stand. Learned Advocate for the petitioners has relied upon a decision of this Court reported in 34 GLR 1728 (S.I. Vora v. State of Gujarat) for arguing that the two offences punishable under sections 302 and 306 of IPC cannot stand together. When the petitioners have been charged for offence under section 302 of IPC and not for offence under section 306 of IPC, then in that event, it is not necessary to refer to the aforesaid decision. It has, then been contended by the learned Advocate for the petitioners that the facts as alleged in the charge sheet papers are contradicted by the opinion of the Medical Officer contained in post mortem note at page 38. It is true that in column 23 of the post mortem note at page 43, it is opined that death of daughter-in-law is due to asphyxia as a result of hanging. However, the prosecution case is that the petitioners caught hold the

next of the deceased and committed her murder.

5. However, we are not here to appreciate the materials and evidence on record. The trial court has simply framed charge and trial has yet not commenced. Therefore, even if there is some contradictory version here or there, the trial court will take care of the same while conducting the trial and while deciding the matter this way or that way. It is not open to this court while exercising revisional jurisdiction against the charge framed against the petitioners to appreciate evidence on record particularly when there are only police statements and medical certificates. The evidence has yet not been commenced.

6. Mr H N Zala, learned Advocate has also argued that as per the decision of the Hon'ble Apex Court an accused person can be held to be guilty for offence punishable under section 306 of IPC, if that offence is proved against the accused persons, though charge is framed against the accused persons may be for offence under section 302 of IPC. This would again be a matter to be discussed and decided at the end of the trial. If the trial court finds that the petitioners have committed offence under section 302 of IPC, then appropriate order can be passed by the said Court. If the trial court finds that the petitioners have committed some offence other than one punishable under section 302, then the trial court may pass appropriate order after hearing the parties or their Advocates. But this is not a stage at which the Court can direct the trial court to act in a particular manner. Therefore, on the one hand, the trial court has framed charge only for offence under section 302 of IPC and not for offence under section 306 of IPC, on the other hand, it would be for the Court concerned to decide as to what offence has been committed by the petitioners and for what offence the petitioners could be convicted. While so doing, the court will be assisted by the parties and their Advocates. It is also well settled that even when there is some suspicion then also charge can be framed since the decision will be taken only after recording evidence. It is also well settled that if there is ground for presuming that the accused has committed offence, a court can frame charge against him. It is also well settled that meticulous consideration of evidence is not required to be done at the stage of framing of charge. It is also well settled that at the stage of framing charge, the Court is required to evaluate the material documents on record to find out if they disclose existence of ingredients constituting

alleged offence. In the present case, we find that even FIR and other statements alleged that the petitioners have committed murder of the deceased. This fact may or may not be proved before the trial court at the trial but when allegations are there, the court was justified in framing charge as was done. It is also not much in dispute that one of the petitioners had preferred application for the discharge in the case. Mr Zala, learned Advocate has contended that it was an application by one of the petitioners only and that too with respect to the entire offence. Now when such an application filed by one of the petitioners was dismissed by the trial court and that order was not carried by way of revision, then it cannot be said that, that a particular petitioner can come with this revision application challenging framing of charge. Any way, having regard to the facts and circumstances of the case and considering the fact that no charge under section 306 of IPC has been framed against the petitioners, there is no reason to interfere with the charge framed by the trial court. Suffice it to say, there is no merit in the revision application and it deserves to be dismissed.

7. For the foregoing reasons, this revision application is ordered to be dismissed. The interim relief granted will naturally stand vacated. Notice discharged.

17.2.2003 [D P Buch, J.]
msp